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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,275	03/04/2004	Siegmar Blumentritt	03100196AA	4227

7590 03/07/2006

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EXAMINER

GIBSON, RANDY W

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/792,275	Applicant(s) BLUMENTRITT ET AL.	
	Examiner Randy W. Gibson	Art Unit 2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-19 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/4/04 & 8/27/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 4 March 2004 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

2. Claim 16 is objected to because of the following informalities: the term "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See ***MPEP*** § 2173.05(d). Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-9 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumentritt et al (US # 5,609,162) in view of Mariani (FR # 2,802,795). Blumentritt disclose a measurement device with a display device (17) for displaying a "force action line" (Col. 3, lines 18-46) and a support plate (1) mounted on measurement cells (3). It is noted that Blumentritt uses data from his four measurement cells to determine the position of the "force action line" so that a doctor can easily visualize when the patient is vertically balanced, or not, by having even pressure (as sensed by the four measurement devices 17) on both feet (I.E.: the barycentric point where a patient has level posture). Blumentritt does not disclose: (i) the lifting devices set upon the support plate (1) for lifting independent foot bearing surfaces; (ii) a spindle with a planetary gear configuration (claim 13); or, (iii) the specific diameter of the spindle screw (claim 16).

Mariani discloses four bearing surfaces (4) with measurement cells (17), and lifting devices (5) arranged on a support plate (6) and under the bearing surfaces (Fig. 4). Mariani disclose that the bearing surfaces are independently adjustable (p. 5). The expressly stated purpose of having the vertically adjustable support surfaces are to

allow the doctor to see in real time what effects the variations in elevation of one foot relative to the other have on the barycentric point of a person in order to eliminate the trial and error techniques previously employed to determine what thickness of sole is necessary for each shoe to give the patient level posture (p. 11).

Regarding element (i), above, it would have been obvious to provide the device of Blumentritt with two independently vertically adjustable bearing surfaces, one for each foot, as taught by the example of Mariani, to eliminate the trial and error techniques previously employed to determine what thickness of sole is necessary for each shoe to give the patient level posture.

Regarding the limitation in claim 13 that the lifting device has a planetary gear configuration, the examiner takes official notice that such a configuration is old, and that it would have been obvious to the ordinary practitioner to use any lifting device, such as one with a planetary gear configuration, based on its art recognized suitability for its intended use. See **MPEP** §§ 2144.03 & 2144.07.

Regarding the limitation in claim 16 that the spindle screw of Mariana be of a specific diameter, it has been held that "...where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). See also **MPEP** § 2144.05(II). It would have been obvious to the ordinary practitioner to use a spindle screw that was of sufficient thickness to support the maximum expected weight of someone from the general population so that a patient did not break the machine.

With respect to claim 2, the lifting devices disclosed by Mariani are steplessly adjustable (p. 6).

With respect to claim 3, the lifting devices disclosed by Mariani are of necessity individually adjustable (pp. 5 & 6).

With respect to claim 4, the lifting devices disclosed by Mariani are electric (p. 6).

With respect to claims 5-9 the lifting devices disclosed by Mariani are of necessity arranged parallel to each other and are located on both sides of a center plane depending on how one defines the center plane (p. 5; Fig. 2).

With respect to claims 11, 12, 15 this type of lifting device is being used by Mariani (Fig. 4).

Regarding the limitations of claims 17-19, the laser beam as described is disclosed by Blumentritt; see *supra*.

Conclusion

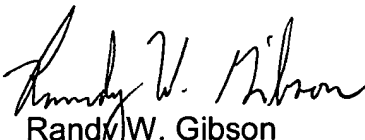
5. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Mariani discloses only two (2) lifting devices, and there is no motive in the art of record to use three (3).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Randy W. Gibson
Primary Examiner
Art Unit 2841